

Conservation Advisory Council | City of Newburgh, New York

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May 28, 2014

SENT VIA EMAIL

City of Newburgh
Mayor and City Council
83 Broadway
Newburgh, NY 12550

Honorable Mayor and Council Members:

I have reviewed the proposed City of Newburgh Draft Zoning Code Update as provided to me by the Department of Planning (Ian MacDougal, City Planner). Items that I thought should be clarified, corrected or addressed in some way are listed in the following pages.

These comments are arranged as follows: Comments on the 93 pages of the zoning code are listed first with a "Summary" of general comments following. I provided the page number and the section for each comment. The Form-based Code section was separated from the other document in my copy and review comments on that section are listed last. *Blue italic text indicates my comment.* Red text underlined indicates suggested text. Text to be removed is shown as: ~~xxx~~. **Yellow Highlight** is related to the comment below it. *Note: the copy of the 93-page text I reviewed was labeled and dated "DRAFT 2/21/14." The copy of the Form-Based Code I reviewed was labeled and dated "DRAFT – For Discussion Only, 1/20/2014."*

I was asked to review this proposed document as chairman of the City of Newburgh Conservation Advisory Council and as a concerned and interested resident homeowner of Newburgh. Over the last few days, I have done just that, and I offer the following comments for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Richard Harper". The signature is written in a cursive style with a large initial "R".

Richard Harper, *AICP*, Chairman
City of Newburgh Conservation Advisory Council

CC: James Slaughter, Director of Business and Industrial Development
Ian MacDougal, City Planner
AKRF (forwarded by Ian)
Michael G. Ciaravino, City Manager
Jason Morris, City Engineer

Review comments dated May 27, 2014

CITY OF NEWBURGH DRAFT ZONING CODE UPDATE

ARTICLE ____ TITLE, SCOPE AND PURPOSE

§300- __. Introduction and user guide

PAGE 2 OF 93:

B. (2) *This section needs reworking. The last sentence is quite confusing. What is referenced in the Use Table? Also, the definitions section does not include all use categories. It should be significantly expanded.*

B. (5) "...the use of Conservation Development Districts (CDD), which preserves open space..."

B. (8) *The last sentence: "Article ____ contains the procedures for amending this chapter to change the map (a 'map amendment') or the text (a 'text amendment'). This sentence should be set out as B. (9).*

C. "How to use this chapter. Landowners and others who use this Chapter are encouraged to meet with the Building Inspector or the designated intake personnel to discuss how this Chapter applies to their property. For any large scale development (a large business or a development of several homes), it is also a good idea to consult the City's Comprehensive Plan (found on the city's web page or on file at the city clerk's office) to understand how to make a proposed development fit within the City's vision of its future. The usual sequence of steps in using this Chapter is as follows:"

PAGE 3 OF 93:

C.(3) "Consult the ~~Use Table~~ Schedule of Use Regulations and text in § ____, along with any relevant definitions in Article ____ Definitions, to determine whether your proposed use is allowed in that district and what permits may be needed to approve it. Also check the specific sections that ~~deal with the district your land is located in~~ address the district in which your

land is located, as well as any supplementary regulations in Article ____ that may apply to your proposed use. ~~{USE TABLE}~~”

C. (5) “If your land is in the Conservation Development District (CDD), review the requirement of a conservation analysis and the various development options provided in §§ ____ through ____ to determine which option you want to pursue.”

C.(6) “If you have an existing use that is no longer permitted, or if your existing building or lot does not comply with dimensional standards for your zoning district, refer to Articles ____ and ____ to determine what you can do with it.”

GENERAL COMMENT: When a reference is made to an article, or to a section within an article, the name or heading of that article or section should also be indicated.

ARTICLE ____ DEFINITIONS AND WORD USAGE

§300 - __. Definitions and word usage

GENERAL COMMENT: Definitions should be expanded to include all land uses mentioned in this chapter.

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B. (6) APARTMENT HOUSE (SAME AS MULTI-FAMILY DWELLING): A residential building that contains (more than [four) or more] dwelling units, with one primary entrance to access all dwelling units contained therein. An apartment may...” *Should be clarified: “more than four” or “four or more”?*

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B. (7) APARTMENT, ACCESSORY: A self-contained residential dwelling unit, clearly incidental and secondary to the principal dwelling of which it is a part, having a separate entrance and containing separate cooking, eating,

sanitation and sleeping facilities for the exclusive use of the occupant in a one-family dwelling, or in a separate accessory structure on the same lot as a one-family dwelling. *This is confusing; needs clarification.*

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B. (78) OPEN SPACE: That portion of the lot that is unencumbered by any structure or any other impervious surface. *This may be in conflict with the definition of "open space" used by the City of Newburgh Conservation Advisory Council in the compilation of the required Open Space Map. Please clarify.*

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B. (81) PARKS, OPEN SPACE, AND RECREATION: Those areas owned or used by the City, other public entity or government, or non-profit organizations that are devoted to parks, playgrounds, recreation areas, nature preserves, or open space. *This could be confusing by using the same term (open space) in the definition as in the word being defined.*

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C. Review of vouchers; payment

C. (1) "The Director of Planning and Development shall review and audit...and consideration of applications. In auditing the vouchers, the Director of Planning and Development may take into consideration...and any special conditions the applicable Board (City Planning Board, Zoning Board, Architectural Review Board) may deem relevant." *Is this the correct title, Director of Planning and Development?*

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I. (2) Any structure for which a building permit has been issued which remains partially complete with no substantial progress over a six-month period shall be considered a violation of this Chapter to be remedied pursuant... *See "D" on the next page.*

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D. "Failure to complete construction. Any structure for which a building permit has been issued which remains partially complete with no substantial progress over a **twelve-month** period shall be considered a violation of the Chapter to be remedied pursuant to..." *See I. (2) above: six-month period versus twelve-month period? Please clarify.*

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D. "Where the boundary of a district follows shorelines, streams, creeks and water bodies, said boundary shall be deemed...." *Add an "s".*

§300 - _____. Higher Standards to Prevail

"In their interpretation and application, the provisions of this Chapter shall be held to be the minimum requirements. Whenever the requirements....." *Add the word "be."*

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ARTICLE ____ LAND USE DISTRICT REGULATIONS

A. "...the City Planning Board shall impose any conditions that may be necessary to ensure that a proposed use will be compatible **with its surroundings**. The City Planning Board shall deny..." *What if the surroundings are negative?*

Use Table Key: *Why not repeat this key on the Schedule of Use Regulations?*

General Comment: Why not use the actual title, "Schedule of Use Regulations" rather than "Use Table?"

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On the Schedule of Use Regulations, the uses listed within each color code should be in alphabetical order.

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H. (4) Steps and stairs may extend d not more than 4 feet into any required yard.

H. (5) Awnings or movable canopies may extend d not more than 4 feet into the required side or rear setback area.

General comment: Either spell out the number (four) or use the number itself (4) or both, but be consistent. Also be consistent with punctuation.

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§ 300 - _____. Conservation Development District

C. "Definitions. For the purposes of this section, 'environmental resource areas' mean s areas of slopes over 20%, delineated wetlands, streams, lakes..." *Add an 's'.*

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I assume the Form-based Code section will be placed here. *Spell out the names of the districts represented by BC, DN, WC and PWD.*

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C. (7) "Acceptance on behalf of the City Council of the donation of façade easements and development rights, and the making of..." *What are façade easements?*

C. (10) *Correct the spacing.*

C. (11) *Correct the spacing.*

C. (12) *Correct the spacing.*

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A. (2) (h) "Repair of gutters and downspouts that ~~mat~~ matches the existing material in form or better."

A. (2) (i) "Installation of insulation where exterior siding or trim is not altered or damaged and is not inset by the new from new insulation or stays proud of the building plane as originally intended." *Please clarify.*

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B. "The ARC, in its deliberations, shall be guided by the design guidelines that have ~~duly been~~ been duly adopted by the City Council in any review authorized herein."

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C. (9) "That portion of the Hudson River that is not within the Planned Waterfront District (PWD) zoning district."

E. "Setbacks. Within the WPO District, no principal structure shall be....within 50 feet of a watercourse. These setbacks shall not apply to docks, piers, bridges, and other ~~structures~~ structures, which by their nature must be located on, adjacent to, or over the watercourse. For purposes of determining"

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§300 - _____ Off-Street Parking Standards

A. 'Traditional' Zoning Districts. 'Traditional' zoning districts, as defined in ~~defined in~~ § 300-(B), shall be subject to the minimum off-street parking requirements specified in the *Schedule of Bulk, Area, and Parking Regulations*."

§300 - _____. Design, Layout and construction of parking areas.

A (1) "Each perpendicular parking space shall not be less than nine (9) feet by eighteen (18) feet. No less than 300 square feet of parking..." *Be consistent throughout the entire document.*

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§ 300 - _____ Existing nonconforming lots

A. (1) (a)(b)(c) and (d) *Please provide missing area and dimension information.*

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B. (5) "Referral. To assist in the elevation, the City Planning Board shall refer all applications for site plan approval within the WG and PWD Zoning Districts to the Conservation Advisory ~~Commission~~ Council (CAC). Such referral shall be done so as to allow the CAC at least 30 days to review and return comments."

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A. (2) "Upon stamping and signing the site plan, the City of Newburgh Planning Board shall forward a copy of the approved site plan to the Building Inspector and the applicant. The Building Inspector may then issue a building permit or certificate of occupancy if the project conforms to all both" *Sentence does not end clearly. Please clarify.*

C. "As-built plans and inspection of improvements. No certificate of occupancy shall be granted until the applicant has filed a set of as-built plans with the City Engineer and Building Inspector, indicating any deviations from the approved site plan. The City Engineer and Building Inspector shall be responsible for the inspection of site improvements, including coordination with the City Engineer and shall grant a certificate of occupancy upon a

finding that the project as built complies in all material respects with the site plan." *This phrase is not clear. Please clarify.*

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I. (2) "Conservation Advisory Council (CAC). The City Planning Board shall refer any special use permit application with in the Water Protection Overlay District (WPO) to the Conservation Advisory ~~Commission~~ Council for review and recommendations. Such referral shall be done so as to allow the CAC at least 30 days to review and return comments."

I. (3) Architectural Review Commission. The City Planning Board ~~may~~ shall refer any special use permit application within historic districts or architectural design districts to the Architectural Review Commission for review and recommendations. Such referral shall be done so as to allow the ARC at least 30 days to review the application and return comments.
Why not "shall" rather than "may?"

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K. (3) (k) [2] Architectural Review Commission (ARC) and Conservation Advisory Council (CAC)

K. (3) (k) [3] "Where the City Planning Board has referred the application....of the proposed action. In the event that the ARC and/or CAC recommendation is not forthcoming within 30 days following referral of the Coastal Assessment Form (CAF), the City Planning Board shall make its determination without the benefit of the ARC and/or the CAC recommendations." *Spell out "coastal assessment form."*

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L. (3) "Expiration. A special permit shall expire if the special permit use or uses cease for more than 24 consecutive months for any reason or if.....issuance without renewal." *24 consecutive months seems too long. Is this typical?*

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A. (7) (c) "Professional office of engineer, architect, lawyer, insurance, real estate, accounting, or similar customary home office based professions"

Where does 'artist studio' come in?

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J. (1) "Applicants must provide copies of all applicable New York State and Federal permits required for operation."

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C. (3) "Conservation Advisory Council (CAC). Whenever a request for appeal or application for variance involves the City's **waterfront area**, the Zoning Board of Appeals shall determine the consistency of the proposed action as set forth in Chapter 159-5 of the Code of the City of Newburgh, known as the 'City of Newburgh Waterfront Consistency Review Law.' The Zoning Board of Appeals shall refer a copy of a completed Coastal Assessment Form (CAF) and other appropriate application materials to the Conservation Advisory Council within 10 days of its submission and, prior to making its determination, shall consider the recommendation of the CAC with reference to the consistency of the proposed action. In the event that the CAC recommendation is not forthcoming within 30 days following referral of the CAF, the Zoning Board of Appeals shall make its determination without the benefit of the CAC recommendation." *Is 'waterfront area' specific enough in this instance?*

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E. (2) "Every decision of the Zoning Board of Appeals shall be approved by the affirmative vote of a majority of all the members by resolution which contains a full record of the findings of the Zoning Board of Appeals in the case. If the Zoning Board of Appeals acts contrary to the recommendations of the City Planning Board or the County Planning Board, it shall give written

reasons for such action. *Why shouldn't the ZBA also give written reasons for acting contrary to the recommendations of the CAC and/or the ARC?*

COMMENT SUMMARY:

1. The Introduction and User's Guide is an excellent section, except for the typo's and lack of clarity in certain places. Cleaned up and clarified, this should prove very helpful to all those who choose to use it.

2. I am concerned that there has been no "build-out analysis" performed to prove water and sewer capacity needs and availability. I assume this analysis was not part of the contract between Greater Newburgh Partnership and AKRF; however, surely the city will want an analysis performed prior to approving this document.

3. It is my understanding that AKRF has not conducted "public workshops" whereby the general public can feel comfortable asking detailed questions about specific parcels of land. It would be advantageous for AKRF to include in their presentations exactly what has changed and how the change will impact the use of particular areas or parcels. How and where is the proposed rezoning consistent with the adopted Comprehensive Plan and the Future Land Use Plan? How and where is it not consistent, if any? What was their thinking to justify it being different in a few areas? It is also my understanding that the City Planner, Ian MacDougall, is conducting at least two meetings of this type at the Library on Thursday, May 29, 2014. It would be good if the consultant and/or some of the land use committee members could be present at those two meetings. Will there be others? How long will the public comment period be open?

4. I notice that land around the major institutions of St. Luke's Hospital and Mt. Saint Mary's College is zoned residential with "institutional use (hospital or education)" as special permitted uses. In a case of the institution wanting to expand its footprint, should the resulting diminished tax roll be taken into consideration? Should there be a limit to the allowed land expansion of these uses?

5. *I assume grammar and spelling and consistency of format will be corrected.*

6. *Regarding parking requirements in the proposed document: if our strategy is to discourage residents in the downtown area from having cars, making it inconvenient to find a place to park and thereby encouraging more use of public transportation, we must increase our emphasis on the improvement of public infrastructure. I believe in the wisdom of this strategy; however, along with it should come more public comment about what efforts are being undertaken to make public transportation a reality and a viable alternative in Newburgh. I am aware of funding and grant applications to address this issue. The city should publicize them more.*

FORM-BASED CODE *(copy reviewed dated 1/20/2014 and tagged as "DRAFT – For Discussion Only")*

Page 4, **Section 1.1 Purpose and Intent**

"This form-based code will:

4th line – "Provide guidelines for the redevelopment of the waterfront"
Should this be related to the LWRP?

Page 8, **Section B. Uses by Special Permit of the Planning Board**
It would be helpful if these listed uses were in alphabetical order.

Page 11, **2.1 Broadway Corridor**
Purpose & Intent

Last paragraph: A transit oriented development is planned for the western end of the district. The area is bound by Broadway to the north and West Street and Lake Street to the east-west and ~~west~~ east.

Page 15, **2.2 Downtown Neighborhood**

Purpose & Intent

Fifth line of last paragraph: "...if not on Liberty or Grand Streets. Please clarify.

Page 24, **District Standards**

Lot Standards

(EE) Hudson River Setback – *Is this consistent with setbacks called for in the Water Protection Overlay?*

Page 29, **3.1 Building Types**

Standards – Entrances

Last line: "Security doors guards shall be integrated with the design of the building." Eliminate the "s" on "doors."

Page 45, **3.5 Landscape Standards**

Parking and Loading Area Landscaping

3. "Within a surface parking lot each landscape island shall contain a minimum of 1 large canopy tree." *Add the "s" on shall.*

Page 46, **3.5 Landscape Standards**

List of Recommended Street Trees

Should the Conservation Advisory Council – Urban Forestry Subcommittee be consulted on this?

Pages 48, 49 & 50

In the version I reviewed, these pages have lines highlighted with question marks. I assume these were areas of the code needing further study and clarification. Please advise.

Note:

Blue italic text indicates a review comment. Red text underlined indicates suggested text. Text to be removed is shown as marked through: ~~xxxx~~.

Note: the copy of the 93-page text reviewed was labeled and dated "DRAFT 2/21/14." The copy of the Form-Based Code reviewed was labeled and dated "DRAFT – For Discussion Only, 1/20/2014."